removed by the very careful questions put to the appellant by the Magistrate, and it would appear from the answers to those questions that no promise was in fact ever made.

Consideration of the two statements, together with the medical evidence, could have left no doubt in the learned trial Judge's mind as to the truth of the two statements. In our view, the evidence supports the conviction, and the appeal is accordingly dismissed.

Appeal dismissed.

ABDULLAH BIN SAAD v. PUBLIC PROSECUTOR

[C.A. (Mathew C.J., Buhagiar and Good JJ.) January, 24, 1955]

[K.L.—F.M. Criminal Appeal No. 83 of 1956]

Penal Code. s. 302 — Murder — Only evidence against appellant was that he pawned some jewellery which belonged to the deceased — Evidence insufficient to found a conviction for murder — Evidence Ordinance, 1950, s. 114 illustration (a) — Circumstantial evidence.

The appellant in this case was convicted of murder. The deceased met his death on May 15, 1955. It was proved that on May 16, 1955 appellant pawned some jewellery which belonged to the deceased. Apart from this piece of evidence, there was nothing to connect the appellant with the crime.

Held: the only evidence to connect the appellant with the killing was the pawning of two pieces of jewellery, the property of the deceased, and it was not certain that they were on the deceased's person on the day of his death; this did not supply sufficient evidence on which to found a conviction for murder and therefore the conviction must be set aside.

CRIMINAL APPEAL to the Court of Appeal.

A. Jayadeva for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Mathew C.J. (delivering the judgment of the Court): — The appellant was convicted of the murder of an old fowl-seller and was sentenced to death. The deceased met his death on 15th May, and on the 17th of May his body was discovered in an abandoned tapioca plantation. His hands and feet were tied and two sticks were lying near the body. Either of those sticks could have caused the injuries which resulted in his death.

It was proved that on the 16th of May the appellant pawned some jewellery which belonged to the deceased. Apart from this piece of evidence there is nothing to connect the appellant with the crime. One Saad gave evidence that he was called by the appellant to the scene of the killing and asked to assist in digging a grave; but in his summing up to the assessors the learned trial Judge directed them to disregard his evidence entirely and, presumably, when the learned trial Judge convicted the appellant he himself disregarded Saad's evidence. The conviction then rests entirely on the proved fact that the appellant was in very recent possession of property of the deceased. Whether the deceased was carrying exhibits P9 and P10 on the day he met with his death is not certain. All that is known definitely is that exhibits P9 and P10 were handed to the deceased by his brother (P.W. 4) on the 2nd of May 1955 and that it was his habit to carry his valuables and money in a cloth belt round his waist.

In his summing up to the assessors, the learned trial Judge said :—

"Mr. Sheldon referred you to certain statutory presumptions and what he told you is correct law, but they should not be applied unless you are satisfied that no reasonable explanation of the recent possession of the jewellery by accused has been given."

Presumably, the statutory presumption was illustration (a) of section 114 of the Evidence Ordinance, which reads :—

"The Court may presume —

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;"

Wills on Circumstantial Evidence, 7th edition, p. 104 has the following passage :—

"The possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. Upon an indictment for arson, proof that property which was in the house at the time it was burnt, was soon afterwards found in the possession of the prisoner, was held to raise a presumption that he was present at, and concerned in, the offence; **R. v Rockman** (1789) 2 East P.C. p.1035, and see **R. v Fuller**, (1816) R. & R. 308. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognised. It is upon the same principle that a sudden and otherwise inexplicable transition from a state of indigence and a consequent change of habits or a profuse or unwanted expenditure inconsistent with the position in life of the party, is sometimes a circumstance extremely unfavourable to the supposition of innocence (**R. v Burdock**) (murder by poison) Bristol Assn. Ap.1835, Cor: Sir Charles Wetherell, Recorder.

But the rule must be applied with discrimination, for the bare possession of stolen property, though recent, uncorroborated by other evidence, is sometimes fallacious and dangerous as a criterion of guilt."

In the present case, the only evidence to connect the appellant with the killing is the possession of two pieces of jewellery, the property of the deceased, and it is not certain that they were on the deceased's person on the day of his death. In our view, this did not supply sufficient evidence on which to found a conviction for murder, and we accordingly allowed the appeal and directed that the appellant should be discharged.

Appeal allowed.

ISA BIN CHE NOH & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) January 30, 1956]

[Kota Bharu — Criminal Appeal No. 102 of 1955]

Penal Code ss. 34 and 324 — Common intention.

This was an appeal against the conviction of the appellants on a charge of voluntarily causing hurt by means of an instrument used for cutting to wit a "parang", an offence punishable under section 324 of the Penal Code.

The brief facts of the case were that the complainant and another man were walking along a path at about 8 p.m. in the vicinity of their village. They were apprehended by the three appellants walking in single file. The evidence showed that the first appellant was some distance in front of the other two appellants. It appeared that the first appellant asked the complainant who he was and then attacked the complainant and a fight took place between them. The only evidence against the second and third appellants was that they joined in the fight for a short duration, punched the complainant and then ran away. It was alleged that in the course of the fight the first appellant struck the complainant with a "parang".

Held: the evidence in this case was insufficient to establish beyond reasonable doubt that there was in fact any pre-arranged plan to assault the complainant with a "parang" between the three accused and therefore the convictions of the second and third appellants must be set aside.

Case referred to:—

(1) *Chin Hon & Ors. v. Public Prosecutor* (1948) M.L.J. 193.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Saik Kee for the appellants.

Syed Hamzah bin Tahir (Federal Counsel) for the respondent.

Rigby J. (delivering oral judgment) : — The three appellants in this case were jointly charged with voluntarily causing hurt to one Syed Abdullah bin Syed Ahmad by the use of an instrument used for cutting, to wit, a "parang", contrary to section 324 of the Penal Code.

The case for the prosecution was that the "parang" was in fact used by the first appellant but that all three appellants were jointly concerned in the commission of the offence. For the prosecution to succeed in this case it was necessary for them to establish that there was in fact a common intention on the part of all three appellants to commit the offence in fact committed. The headnote to the case of *Chin Hon & Ors. v. Public Prosecutor*[1], reads :—

"To invoke the aid of s.34 of the Penal Code successfully it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all: if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act was done by him alone."

In my view, the evidence in this case does not establish that there was in fact a common intention on the part of the appellants to commit the offence alleged.

The brief facts of the case were that the complainant and another man were walking along a path at about 8 p.m. in the vicinity of their village. They were approached by three persons — the three appellants — walking in single file. The evidence clearly establishes that the first appellant was some distance in front of the other two appellants. It would appear from the evidence that the first appellant then asked the complainant who he was and then allegedly attacked the complainant and a fight took place between them. The only evidence against the second and third appellants was that they joined in the fight for a short duration, punched the complainant and then ran away. It was alleged that in the course of the fight the first appellant struck the complainant with a "parang". As I have said, for the prosecution to succeed in the case against the second and third appellants, it was necessary to establish that there was a pre-arranged plan between all three appellants, not merely to assault the complainant but to assault him with a "parang" or other cutting instrument. In my view the evidence in this case was insufficient to establish beyond reasonable doubt that there was in fact any such common intention between the three accused. The appeal as regards the second and third appellants is accordingly allowed, and the conviction and sentence set aside.